



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

FROM CONCEPT TO CONSTRUCTION

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**Date:** December 16, 2014  
**To:** Interested Person  
**From:** Matt Wickstrom, Land Use Services  
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## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 14-219589 NE**

#### **GENERAL INFORMATION**

**Applicant:** Benjamin & Ashley Agre  
3720 SE 14th Ave / Portland OR 97202

**Site Address:** 3720 SE 14TH AVE

**Legal Description:** BLOCK 30 LOT 5 EXC S 15', FEURERS ADD  
**Tax Account No.:** R276902790  
**State ID No.:** 1S1E11DB 08500  
**Quarter Section:** 3431  
**Neighborhood:** Brooklyn Action Corps, Hotline at 503-241-4540  
**Business District:** Greater Brooklyn, contact David Weislogel at 503-872-9320  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010  
**Zoning:** R5 (Residential 5,000)  
**Case Type:** NE (Nonconforming Status Review)  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicant proposes to establish a nonconforming residential density (triplex) at this site. Typically, in the R5 (Residential 5,000) zone, only one dwelling unit is allowed per lot. However, during World War II additional residential density was allowed. Documentation shows that the house was legally converted to a duplex during World War II. The applicant has provided additional documentation to demonstrate that in 1972, the duplex was legally converted to a triplex. This documentation includes a 1972 permit, photos depicting work completed as part of the permit, and a letter from a neighbor who has lived in the vicinity since 1989.

#### **Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

- 33.258.075.D Determination of Nonconforming Status Review Approval Criteria

## ANALYSIS

**Site and Vicinity:** The 3,500 square foot lot is developed with a two-story residential structure with a basement. The surrounding vicinity is developed with single-dwelling residences and duplexes. A two-story school is located in the vicinity as is the upcoming Portland-Milwaukie Light Rail MAX line.

**Zoning:** The site is zoned R5 (Residential 5,000). The R5 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet. One dwelling unit is allowed per lot except on corner lots where duplexes or two attached houses are allowed. During World War II additional residential density was allowed. The Portland Zoning Code states that once nonconforming residential densities are established, they may continue over time regardless of the length of time dwelling units may be vacant.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **November 17, 2014**. The following Bureaus have responded:

The Bureau of Environmental Services responded with information on sanitary service and stormwater management (Exhibit E-1).

The Life Safety section of the Bureau of Development Services (BDS) responded with information on changes of occupancy (Exhibit E-2).

The Portland Water Bureau responded with information on water service (Exhibit (E-3).

The Urban Forestry section of Portland Parks & Recreation responded with information on street trees (Exhibit E-4).

The Fire Bureau responded that applicable Fire Code requirements will apply (Exhibit E-5).

The Site Development section of BDS and the Development Review section of the Portland Bureau of Transportation responded with no concerns (Exhibit E-6).

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### Title 33.258.075 Determination of Legal Nonconforming Status Review

This review will determine if a use or site has legal nonconforming situation rights. In addition, it will determine what the current legal use is, based on the use categories in Chapter 33.920.

1. The legal status of the nonconforming situation will be certified if the review body finds that:
  - a. The nonconforming situation would have been allowed when established; and

**Findings:** The applicant provided a Report of Building Inspection dated January 10, 1972 (Exhibit A-1). This inspection record is intended to document that the proper permits were obtained to add an additional dwelling unit to the residential structure. The applicant also provided photos of the added dwelling unit (for a total of 3 units) to demonstrate the components of work listed in the Report of Building Inspection match work completed in the dwelling unit (Exhibit A-2). The inspection card lists the zoning as A2.5 (Apartment Residential Zone). A review of historic zoning maps confirmed this zoning designation was in

effect at the time. The applicant also provided an excerpt from the Portland Zoning Code in effect in 1972 that describes the A2.5 zone (Exhibit A-3). The description states that one-family dwellings, two-family dwellings and apartment dwellings were the permitted uses in the A2.5 zone.

Based on this information, the use was allowed in the zone at the time it was established.

b. The nonconforming situation has been maintained over time.

**Findings:** Typically, nonconforming uses need to be maintained over time in order to continue nonconforming rights. This is typically done by providing phone book listings, utility bills, tax records or other pieces of “standard evidence” to show the use was not discontinued for a period of 3 or more years since it became nonconforming. However, in the case of nonconforming residential densities, Portland Zoning Code Section 33.258.060.B.1 states “nonconforming residential density rights continue even when a building has been unoccupied for any length of time”. Based on this information, this criterion is not applicable.

2. The review body will determine, based on the evidence, what the current legal use is, using the definitions in Chapter 33.910 and the use categories in Chapter 33.920.

**Findings:** As mentioned in the findings above, the applicant provided a copy of a Report of Building Inspection from January 10, 1972. The report lists the “group” or classification of the type of structure as “H”. The applicant also provided a document produced by the Bureau of Development Services that lists the evolution of occupancy classifications between 1958 and 1979 (Exhibit A-4). The document shows that that “H” group or classification was used for hotels and apartment houses. This classification is consistent with the assertion that the residential structure was converted to a triplex in 1972.

In order to further document the legal conversion of the residential structure to a triplex, the applicant provided photos of the second floor unit. The photos provide visual documentation of the work listed on the 1972 Report of Building Inspection. This work includes a partition wall that was created to install a door at the top of the stairs which effectively separated the new dwelling unit, windows that were changed, wiring necessary for appliances, and cabinets. The appearance of the unit and work listed in the 1972 Report of Building Inspection match the era in which the applicant contends the third dwelling unit was established.

The applicant provided a notarized letter from a neighbor who has lived at SE 14<sup>th</sup> Avenue and SE Bush Street since June 1989 (Exhibit A-5). The letter states that since the neighbor moved to this address, the residential structure at 3720 SE 14<sup>th</sup> Avenue has been used as a triplex. This statement corroborates assertions that the residential structure was legally converted to a triplex and has been used in that manner over time. The applicant also included a letter from the former owner of the residential structure (Exhibit A-6). The letter states “we purchased the home from the family of the original owner as a triplex”. The letter also states that “prior to the purchase, the (original) owner informed me that the home had been converted legally from a duplex into a triplex in the early 1970’s”. These statements corroborate assertions that the residential structure was legally converted to a triplex and has been used in that manner over time.

Based on the information above, the applicant has provided adequate evidence to show that the current legal use of the residential structure is that of a triplex. Furthermore, the structure meets the definition of “triplex” found in 33.910. This criterion is met.

## **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans

submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS

The applicant has requested a Nonconforming Status Review to determine if nonconforming residential density rights exist at this site. All applicable approval criteria are met, and therefore nonconforming residential density rights allow the continued operation of a triplex at 3720 SE 14<sup>th</sup> Avenue.

## ADMINISTRATIVE DECISION

Approval of nonconforming residential density rights for continued operation of a triplex (33.258.070), per the attached zoning map.

**Staff Planner: Matt Wickstrom**

**Decision rendered by:**  **on December 12, 2014**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: December 16, 2014**

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on September 30, 2014, and was determined to be complete on **November 12, 2014**.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on September 30, 2014.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: March 12, 2015**.

**Some of the information contained in this report was provided by the applicant.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review,

any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on December 30, 2014** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **December 31, 2014 - (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

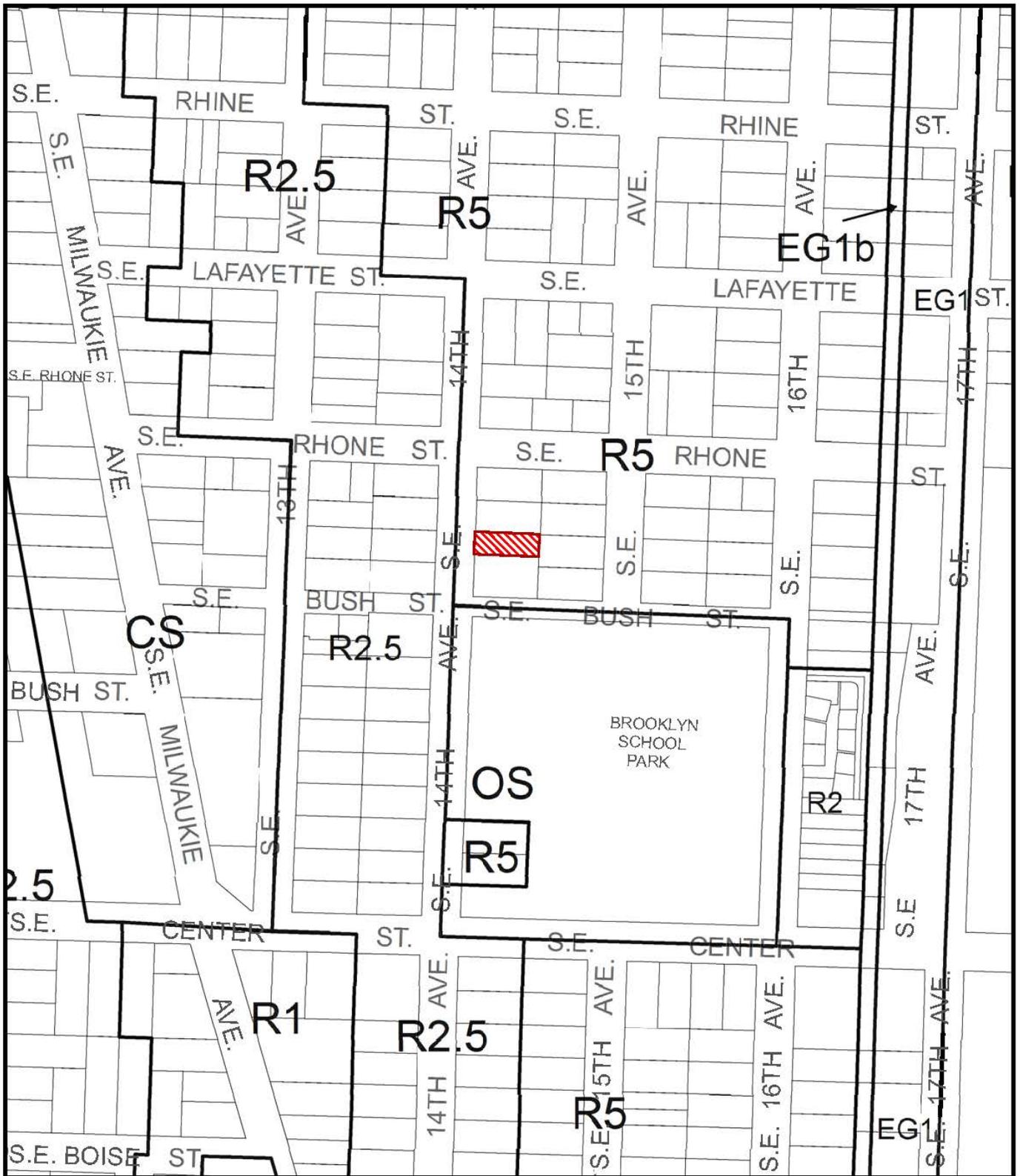
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
  1. Report of Building Inspection
  2. Photos of dwelling unit received November 12, 2014
  3. Description of A2.5 zone
  4. Document describing evolution of occupancy classifications
  5. Notarized letter from Charlene Bruihl received December 3, 2014
  6. Letter from Norman C. Swanson dated September 26, 2014
- B. Zoning Map (attached)
- C. Plans/Drawings: None
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Environmental Services
  2. Life Safety Section of BDS
  3. Water Bureau
  4. Urban Forestry Section of Portland Parks & Recreation
  5. Fire Bureau
- F. Correspondence: None received

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



# ZONING



Site



NORTH

File No.	<u>LU 14-219589 NE</u>
1/4 Section	<u>3431,3432</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E11DB 8500</u>
Exhibit	<u>B (Oct 02,2014)</u>